

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

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| VTX COMMUNICATIONS, LLC, et al., | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| VS. | § | CIVIL ACTION NO. 7:19-CV-00269 |
| | § | |
| AT&T INC., et al. | § | |
| | § | |
| Defendants. | § | |

PLAINTIFFS' ANSWER TO AT&T DEFENDANTS'
DEMAND FOR INDEMNIFICATION

VTX Communications, LLC and VTX Investments, LLC (collectively, “VTX”), individually and derivatively on behalf of McAllen-Edinburg-Mission SMSA Limited Partnership (the “McAllen Partnership” or “McAllen”), VTX and SWT Unregulated Properties, Inc. (“SWT”), individually and on behalf of Texas RSA 18 Limited Partnership (the “RSA 18 Partnership” or “RSA 18”), and VTX and Riviera Cellular & Telecommunications, Inc. (“Riviera”) individually and on behalf of Texas RSA 19 Limited Partnership (the “RSA 19 Partnership” or “RSA 19” and together with McAllen Partnership and RSA 18 Partnership the “Partnerships,” and each a “Partnership”), Plaintiffs in the above-styled and numbered cause (the “Plaintiffs” or the “Limited Partners”), file this Answer¹ in response to AT&T Defendants’ “Demand for Indemnification” found in ¶ 138 of AT&T Defendants’ Answer to Plaintiffs’ Second Amended Petition Conformed Federal Rule of Civil Procedure 23.1 (Dkt 63) filed by

¹ Insofar as AT&T Defendants are intending their “Demand for Indemnification” contained in their Answer to assert affirmative relief in the form of a counterclaim, Plaintiffs are filing this Answer out of abundance of caution.

Defendants AT&T Inc.; New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, individually and in its capacity as General Partner of the Partnerships (“AT&T Mobility”); AT&T Mobility Corporation; Cricket Communications, LLC and Cricket Wireless, LLC (collectively referred to as “Defendants” or the “AT&T Defendants”).

I. ANSWER TO AT&T DEFENDANTS’ DEMAND FOR INDEMNIFICATION

1. Plaintiffs generally deny paragraph 136 in its entirety. Plaintiffs specifically deny that the language quoted therein as “Section 16.2 of the Partnership Agreements” is a full and/or accurate statement of the language contained in Section 16.2 of the Partnership Agreements. Plaintiffs further deny that the General Partner acted at all times in accordance with its duties under the Partnership Agreements and deny that the General Partner is entitled to indemnification.

2. Paragraph 138 of AT&T Defendants’ Answer is a legal statement that requires no answer. To the extent an answer is required, Plaintiffs deny that AT&T Defendants and/or AT&T Mobility are entitled to indemnification for “all loss or damage incurred, including legal expenses, by the General Partner in defending this lawsuit,” pursuant to Section 16.2 of the Partnership Agreements.

II. AFFIRMATIVE DEFENSE

3. Plaintiffs affirmatively assert that AT&T Inc.; AT&T Mobility Corporation; Cricket Communications, LLC and Cricket Wireless, LLC are not parties to the Partnership Agreements and therefore lack standing to assert a claim for contractual indemnification. Further, the General Partnership is guilty of willful misconduct and/or gross negligence as pled throughout

Plaintiffs' Second Amended Petition Conformed Federal Rule of Civil Procedure 23.1.²

Therefore, Defendants have failed to state claims upon which relief can be granted.

II. PRAYER

WHEREFORE, Plaintiffs respectfully request the Court:

- a. Deny all relief requested by Defendants,
- b. Grant all other relief to which Plaintiffs are entitled.

Respectfully Submitted,

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² See Dkt. 54 at 4-5, Pls.' 2nd Am. Pet. Conformed to Federal Rule of Civil Procedure 23.1 ¶ 4 (describing Project Smoothie as the genesis of the AT&T Defendants' self-dealing conduct); Dkt. 54 at 10-11, ¶ 16 (describing AT&T Defendants' self-dealing conduct as "willful and grossly negligent"); Dkt. 54 at 12, ¶ 17 (describing additional AT&T conduct as "ongoing and continuing acts of gross negligence, willful misconduct, self-dealing and interference"); Dkt. 54 at 18-19, ¶ 47 (explaining how the various self-dealing transactions could not have been a "valid exercise of business judgment" and again alleging that the transactions "plainly constitute[] gross negligence and/or willful misconduct").

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CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing was sent by electronic service in accordance with the Federal Rules of Civil Procedure to the following on September 16, 2020.

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